IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 28657 of 2004(J)

PETITIONER:

T.G.MATHEWS, NEDUVAMPIRATH HOUSE,
VINOBA NAVAR, CHILAVANNUR, KADAVANTHARA P.O.,
KOCHI-20.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE REVENUE DIVISIONAL OFFICER, ADOOR.

3. THE TAHSILDAR, KOZHENCHERRY.

4. TALUK SURVEYOR, KOZHENCHERRY TALUK,
KOZHENCHERRY.

BY GOVERNMENT PLEADER SRI.BASANT BALAJI.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP(C) NO.28657 OF 2004)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of the 'delivery kycheet' dtd.11.8.2000.

Ext.P2: Copy of the order passed by R2 dtd.6.10.01.

Ext.P3: Copy of the Encumbrance Certificate dtd.22.5.82.

Ext.P4: Copy of the Encumbrance Certificate dtd.10.10.2000.

Ext.P5: Copy of the order of R2 dtd.8.3.2004.

Ext.P6: Copy of the communication issued by R3 to the petitioner dtd.2.8.2004.

Ext.P7: Copy of the letter addressed to R3 by the petitioner dtd.13.8.2004.

Ext.P8: Copy of the communication issue by R3 to the petitioner dtd.13.9.2004.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

WP(C) NO. 28657 OF 2004 - J

Dated this the 5th day of July, 2007

J U D G M E N T

The petitioner in the writ petition seeks a direction to implement Ext.P5 order of the second respondent within a time limit. In Ext.P5, the Sub Collector held as follows:-

> "In the light of the above facts stated, the only conclusion that can be arrived at is that the Transfer of Registry ought to be affected in favour of the appellant based on the encumbrance certificate for Sy.No.525/1/1/447/11 issued in the year 2000. Mortgage deed No.1916/75 of Konni SRO. Hence the order passed by Additional Tahsildar, Kozhencherry based on the report of Taluk Surveyor denying the petition filed by the appellant dated 30/10/2000 for the transfer of Registry of land in Sy.No.525/1/1/447/11 for an extent of 2 Hectors, 20 Aresis found to be not maintainable and hereby cancelled as the action was taken without going into the merits of the contentions raised by the appellant in regard to the ownership right of the petition schedule property referred in the sale deed and Encumbrance Certificate produced by him. The Tahsildar, Kozhencherry will have to take adequate steps to bring the land referred in the encumbrance certificate No.2437/2000 of Konny SRO

> (Sy.No.525/1/1/447/11 of V-Kottayam Village measuring 5 Acres 45 cents lying south out of the 6 Acres 45 cents) to the Tandapper Account of Sri.Krishnan Nair Sivaram, Santhi Sadanam, Krishnavilasam Estate from old Tandapper No.1322 of erstwhile Pramadom Village and accordingly Transfer Registry have to effected immediately in the name of Sri.T.G.Mathews, S/o.Geevarghese, Theruvilveedu Kaipattoor Vallicode Village."

Thereafter, Ext.P8 notice was issued to the petitioner directing him to appear and point out the physical boundaries of the petitioner's property. The contention of the petitioner is that no further proceedings have been taken pursuant to Ext.P8.

2. Government Pleader has filed a counter affidavit. In paragraph 12 of the counter affidavit, it is stated thus:-

> "12. As per his report No.A8.4720/04 dated 13.10.2004, Tahsildar reported that speedy measures are taken for the

implementation of the order in appeal. Village Officer was directed to take immediate steps to dispose of the application. But the Village Officer reported that in order to fix the boundary and resurvey number of the land in old Survey No.525/1/1/447/11 he needs the assistance of Taluk Surveyor and the Taluk Surveyor was given direction to fix the land. As per the Taluk Surveyor's report, the petitioner T.G.Mathews owns 5 acres 45 cents in Old Sy.No.525/1/447/11 as per the Mortgage Deed No.1916/75 of Konni Sub Registrar Office. Resurvey records are handed over to Revenue authorities on 1.6.2002 in Vellicode Village. As per the survey plan of the property owned by the petitioner and as per the re-survey plan proper site inspection was conducted and ascertained that the land comprised in Resurvey No.383/2, 3, part of Sy.No.436/5 and part of Sy.No.437/1, 3 are included in Bl No.31 of Vellicode Kottayam Village. Old Survey number of the Sub divisions included in resurvey records and the survey number of land owned by the petitioner as per mortgage deed differs."

3. The learned Government Pleader submits

that it is not physically possible to identify the boundaries of the petitioner's property with the help of survey records alone and therefore, the petitioner's help is absolutely necessary which the petitioner has not provided. The learned counsel for the petitioner submits that without the help of the Taluk Surveyor, nothing can be done, even if the petitioner goes as directed in Ext.P8. In so far as the controversy narrows down to the question as to how the property has to be measured and identified, I feel that the writ petition can be disposed of with a direction to the third respondent to take appropriate steps in the matter.

4. Accordingly, the writ petition is disposed of as follows:-

The third respondent shall issue notice to the petitioner directing him to be present on the site of the property on a particular date, on which date, the petitioner may be present there. Copy of the notice

shall be issued to the fourth respondent also. The fourth respondent also shall be present there along with revenue records relating to the property. Thereafter, all of them together shall make an earnest effort to locate the petitioner's property and identify the boundaries.

Sd/-
S. SIRI JAGAN,
Judge

Mbs/

-True Copy-

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007